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EXAMINER	
PHU, SANH D	

ART UNIT	PAPER NUMBER
2682	7

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/841,198	MATSUI, HITOSHI	
	Examiner	Art Unit	
	Sanh D Phu	2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed on 4/15/04.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 2, 4, 7-13, 16, 20 and 24 are rejected under 35 U.S.C. 102(e) as being anticpated by Treyz et al (6,526,335), previously cited.

As per claim 1, Treyz et al discloses a system comprising:

a drive-through facility (drive-through at fast food restaurant, a gas station, etc.) which indicates a location of a communication device (wireless device) (see col. 17, line 62), wherein said communication device communicate with a portable terminal (14) in an automobile (12) (see figure 1) when said automobile is approximate to said location (see figure 52, and col. 47, lines 17-67); and

a data delivery unit (comprising a memory (storage medium) (see col. 47, lines 42-45)) coupled to said communication device and comprising said memory (storage medium) (see col. 47, line 45) storing data which inherently receives a request from said communication device of delivering the stored data to said portable terminal, in responsive to a request from said portable terminal to said communication device, and transmits the stored data to said portable terminal through said communication device (see col. 47, lines 32-34).

As per claim 2, Treyz et al discloses that said communication device make radio communication with said portable terminal through weak radio wave (local wireless link) (see col. 47, lines 17-22, and col. 11, lines 24-31).

As per claim 4, in Treyz et al, said data delivery unit inherently includes a controller which receives a request from said communication device of delivering the stored data to said portable terminal, in responsive to a request from said portable terminal to said communication device, reads requested data from the said memory and transmits the stored data to said portable terminal through said communication device.

As per claim 7, with the same reasons as explained in claim 1, Treyz et al discloses a method comprising:

step (drive-through at fast food restaurant, a gas station, etc.) of indicating a location of data delivery unit (wireless device) and positioning a automobile (12) proximate to said location;

step (14) having a portable terminal (14) in said automobile for transmitting a request to delivery data stored in a memory (storage medium) of said data delivery unit;

step (wireless device) having said data delivery unit for reading data requested by said portable terminal, out of said memory; and

step (wireless device) having said data delivery unit for transmitting said data read out to said portable terminal.

As per claim 8, Treyz et al discloses that said portable terminal down-loads received data (see col. 47, lines 18-21, and lines 34-37) inherently into a memory (inherently included).

Claim 9 is rejected with the same reasons set forth for claim 2.

As per claim 10, with the same reasons as explained in claims 1 and 4, Treyz et al discloses method comprising:

step (14) of requesting delivery of data stored in a data delivery unit (wireless device) to a portable terminal (14);

step (wireless device) having said data delivery unit for reading data requested by said portable terminal, out of a memory (storage medium);

step (wireless device) having said data delivery unit for transmitting data read out to said portable terminal when said automobile is approximate to said data delivery unit.

Claim 11 is rejected with the same reasons set forth for claim 8.

Claim 12 is rejected with the same reasons set forth for claim 2.

As per claims 13 and 16, with the same reasons as explained in claims 1 and 4, Treyz et al discloses a data delivery unit (wireless device) comprising:

a memory (storage medium) of storing data; and

a controller (inherently included) which receives a request to delivery said stored data to a portable terminal (14) in an automobile (12), reads requested data out of said memory, and transmits said data to said portable terminal when said automobile is proximate to said data delivery unit.

As per claims 20 and 24, in Treyz et al, said automobile is inherently defined or assigned spaces that said automobile could be parked so that said portable terminal could communicates with said wireless device.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole

> would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3, 5, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz et al in view of Gerszberg et al (6,385,693), newly-cited.

As per claim 3, Treyz et al does not disclose whether the stored data being stored in memory (storage medium) can be updated through Internet. Gerszberg et al discloses that stored data being stored in memory (600) can be received and updated periodically through internet (see figure 5, col. 9, lines 52-60). Therefore, for an enhancement for the system, it would have been obvious for one skilled in the art, when building Treyz et al invention, to implement said data delivery unit receives data from internet for storing them to said memory (storage medium) such that the stored data being stored in memory would be periodically updated through internet, as taught by Gerszberg et al.

Claims 3, 5, 14 and 17 are rejected with similar reasons set forth for claim 3.

6. Claims 6, 15, 18, 19, 21-23, 25 and 26are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz et al.

As per claim 6, Treyz et al does not disclose that said data delivery unit carries out accounting, based on an identification number transmitted from said portable terminal, after transmitting said data to said portable terminal. However, he teaches that a service provider can carry out accounting, based on an identification number transmitted from a user terminal, after transmitting requested data to said user terminal (see figure 16, col. 22, lines 46 to col. 23, line 21). Therefore, for an enhancement for the system, it would have been obvious for one skilled in the art, when building Treyz et al data delivery unit, to implement said data delivery unit in such a way that it would carry out accounting, based on an identification number transmitted from said portable terminal, after transmitting requested data to said portable terminal if a user uses said portable terminal to make a purchase of service for downloading data from said data delivery unit through a local wireless link.

Claims 15 and 18 are rejected with the same reasons set forth for claim 6.

As per claim 19, Treyz et al does not disclose whether said communication device communicates with said portable terminal when said automobile is within about 2-3 meters from said communication device. However, since in Treyz et al, said automobile must be parked close to or near said communication device during the communications are made between the two, it would have been obvious that one skilled in the art, when building Treyz et al invention, based on his desire choice, could implement said communication device communicates with said portable terminal when said automobile is within about 2-3 meters from said communication device as long as said communication device could communicate with said automobile in this distance.

As per claim 21, Treyz et al does not disclose whether said memory is larger than 5 Gbytes. However, memories more than 5 Gbytes are well known in the art, and the examiner takes Official Notice. Therefore, for an application, it would have been obvious for one skilled in the art to implement Treyz et al memory with a memory larger than 5 Gbytes so that the memory would be enhanced with a large capacity of storage.

As per claim 22, Treyz et al does not disclose whether said communicating device communicates at a rate of 300 to 600 Mbps. However, communications at a rate 300 to 600 Mbps are well known in the art, and the examiner takes Official Notice. Therefore, for an application, it would have been obvious for one skilled in the art to implement said communicating device communicates at a rate of 300 to 600 Mbps so that said communicating device would be enhanced with a capability of fast communications.

Claim 23 is rejected with the same reasons set forth for claim 19.

Claim 25 is rejected with the same reasons set forth for claim 21.

Claim 26 is rejected with the same reasons set forth for claim 22.

Response to Arguments

7. Applicant's arguments filed on 04/15/04 have been fully considered.

Applicant's argument with respect to the objection to the Drawing is render moot. The objection to the Drawing is now withdrawn since the Drawing has been amended to overcome the objection.

Applicant's argument with respect to the rejection, under 35 USC 112, to claim 5 is render moot. The rejection is now withdrawn since the claim has been amended to overcome the rejection.

Applicant's arguments with respect to the rejection, under 35 USC 102, to claims 1-18, as being anticipated by Treyz et al, have been considered. However, the claims, after being amended, are deemed not patentable over Treyz et al or Treyz et al in view of Gerszberg et al, with reasons set forth above in this Office Action.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sanh D Phu whose telephone number is (703) 305-8635. The examiner can normally be reached on 8:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 703-301-6739. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-9817.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-8635.

Sanh D. Phu
Examiner

Art Unit 2682

SP

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
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